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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 13, 2018

Lance Rosenkranz, VP Operations
Los Angeles Galvanizing
2518 E. 53rd Street
Huntington Park, CA 90255

VIA FIRST CLASS MAIL

James Anthony Rosenkranz
Agent for Service of Process for Los Angeles Galvanizing Company
2518 East 53rd St.
Huntington Park, CA 90255

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act

Dear Mr. Rosenkranz:

I am writing on behalf of Communities for a Better Environment ("CBE") in regard to violations of the Clean Water Act (the "Act" or "CWA") that CBE believes are occurring at Los Angeles Galvanizing Company's industrial facility located at 2518 E. 53rd Street in Huntington Park, California ("Facility"). This letter is being sent to Los Angeles Galvanizing Company and Lance Rosenkranz as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Los Angeles Galvanizing").

This letter addresses Los Angeles Galvanizing's unlawful discharge of pollutants from the Facility into the Los Angeles River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CBE refers to the 1997 and 2015 Permits in this letter

collectively as the "General Permit." The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CBE hereby places Los Angeles Galvanizing on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CBE intends to file suit in federal court against Los Angeles Galvanizing under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. Communities for a Better Environment

CBE is a non-profit 501(c)(3) environmental justice organization, organized under the laws of California with its local office at 6325 Pacific Blvd., Ste. 300, Huntington Park, California 90255. Founded in California in 1978, CBE has approximately six thousand active members throughout the state, including many who live and/or recreate in and around Los Angeles County. CBE is dedicated to empowering low-income communities of color that seek a voice in determining the health of their air, water and land. At the behest of its members, for at least 30 years, CBE has sought to protect and promote water resources that are swimmable, drinkable, fishable, and sustainable. To further this mission, CBE actively seeks federal and state implementation of the Clean Water Act. Where necessary, CBE directly initiates enforcement actions on behalf of itself and its members.

Members of CBE reside in Huntington Park and Los Angeles County, and near the Los Angeles River and Pacific Ocean (hereinafter "Receiving Waters"). As explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. CBE members use the Receiving Waters to wade, bird watch, view wildlife, hike, bike, walk, run, and sightsee, as well as for aesthetic enjoyment. Additionally, CBE members use the waters to engage in educational and scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Los Angeles River impairs CBE's members' use and enjoyment of these waters. Thus, the interests of CBE's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

B. The Los Angeles Galvanizing Facility

On information and belief, CBE alleges that the industrial processes that occur at the Facility include activities associated with the primary activity of applying external coatings of a rust preventative zinc coating to the surface of metal parts. This includes cleaning, transporting, storing, and loading metal materials. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") indicates that the scheduled operating hours are 8:00 am to 5:00 pm Monday through Friday and 8:00 am to 3:00 pm on Saturdays.

C. Discharges from the Facility

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") is 4 19I004458. On its Notice of Intent to comply with the General Permit ("NOI"), Los Angeles Galvanizing certifies that the Facility is classified under SIC Code 3479. The Facility is fully paved and covers an area of approximately 2.4 acres. It collects and discharges storm water through at least four discharge locations. On information and belief, CBE alleges the outfalls contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. Storm water discharged from the Facility flows into channels that empty into Reach 2 of the Los Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.

D. Waters Receiving the Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

The Regional Board has identified beneficial uses of the Los Angeles River, the Los Angeles River Estuary, and the San Pedro Bay and established water quality standards for these waters in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/. The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, rare, threatened, or endangered species, preservation of biological habitats, migration of aquatic organisms, spawning, reproduction, and/or early development, and shellfish harvesting. The non-contact water recreation use is

defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 2-2. Contact recreation use includes fishing and wading. *Id.* Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Los Angeles River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life." *Id.* at 3-38. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id.* at 3-29. The Basin Plan provides that "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-37. The Basic Plan provides that "[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges." *Id.* at 3-35. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3-24. The Basin Plan provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-26. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." *Id.* at 3-25. The Basin Plan provides that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at 3-38. The Basin Plan provides that "[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses." *Id.* at 3-37.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).[1]

The EPA 303(d) List of Water Quality Limited Segments lists Reach 2 of the Los Angeles River as impaired for trash, oil, nutrients, copper, and lead, among other pollutants. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml. Reach 1 of the Los Angeles River is impaired for zinc, lead, copper, trash, pH, nutrients, and pathogens, among other pollutants. The Los Angeles River Estuary is impaired for trash and sediment

[1] These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

toxicity, among other pollutants. San Pedro Bay is impaired for sediment toxicity, among other pollutants.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[2] The following benchmarks have been established for pollutants discharged by Los Angeles Galvanizing's Facility: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; chemical oxygen demand ("COD") — 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; and nitrate + nitrite as nitrogen ("N+N") – 0.68 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; COD – 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.26 mg/L; lead – 0.262 mg/L; and N+N – 0.68 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit.

Los Angeles Galvanizing has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as

[2] The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

The Facility has discharged and continues to discharge storm water with unacceptable levels of pH, COD, iron, aluminum, zinc, and N+N in violation of the General Permit. Los Angeles Galvanizing's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of applicable numerical water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling/ Observation Date	**Parameter**	**Observed Concentration/ Conditions**	**Basin Plan Water Quality Objective / CTR**	**Outfall (as identified by the Facility)**
2/10/2017	pH	6.2	6.5 – 8.5	Silver Bullet Effluent
1/11/2017	pH	5.3	6.5 – 8.5	Silver Bullet Effluent
4/12/2016	pH	5.02	6.5 – 8.5	Silver Bullet Effluent
1/6/2016	pH	5.16	6.5 – 8.5	Silver Bullet Effluent
5/14/2015	pH	4.97	6.5 – 8.5	Front Gate/Effluent

12/3/2014	pH	5.59	6.5 – 8.5	Front Gate/Effluent
2/27/2014	pH	5.46	6.5 – 8.5	Silver Bullet Treatment System
12/6/2013	pH	5.11	6.5 – 8.5	Silver Bullet Treatment System
2/10/2017	Zinc	50 mg/L	0.120 mg/L (CMC)	Silver Bullet Effluent
1/11/2017	Zinc	22 mg/L	0.120 mg/L (CMC)	Silver Bullet Effluent
4/12/2016	Zinc	105 mg/L	0.120 mg/L (CMC)	Silver Bullet Effluent
1/6/2016	Zinc	19 mg/L	0.120 mg/L (CMC)	Silver Bullet Effluent
5/14/2015	Zinc	118 mg/L	0.120 mg/L (CMC)	Front Gate/Effluent
12/3/2014	Zinc	20.1 mg/L	0.120 mg/L (CMC)	Front Gate/Effluent
2/27/2014	Zinc	41.7 mg/L	0.120 mg/L (CMC)	Silver Bullet Treatment System
12/6/2013	Zinc	89.8 mg/L	0.120 mg/L (CMC)	Silver Bullet Treatment System

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2013-2014 and 2014-2015 wet seasons, as well as the 2015-2016, and 2016-2017 reporting years. CBE alleges that since at least June 13, 2013, and continuing through today, the Facility has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 (Basin Plan at 3-35)
- Zinc – 0.12 mg/L (CMC)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
1/11/2017	pH	5.3	6.0 – 9.0[3]	Silver Bullet Effluent
4/12/2016	pH	5.02	6.0 – 9.0	Silver Bullet Effluent
1/6/2016	pH	5.16	6.0 – 9.0	Silver Bullet Effluent
5/14/2015	pH	4.97	6.0 – 9.0	Front Gate/Effluent
12/3/2014	pH	5.59	6.0 – 9.0	Front Gate/Effluent
2/27/2014	pH	5.46	6.0 – 9.0	Silver Bullet Treatment System
12/6/2013	Aluminum	1.04 mg/L	0.75 mg/L	Silver Bullet Treatment System
2/10/2017	Iron	32 mg/L	1.0 mg/L	Silver Bullet Effluent
1/11/2017	Iron	23 mg/L	1.0 mg/L	Silver Bullet Effluent
2016-2017 Reporting Year	Iron	27.5 mg/L	1.0 mg/L	All discharge points[4]
4/12/2016	Iron	76.7 mg/L	1.0 mg/L	Silver Bullet Effluent
1/6/2016	Iron	15.8 mg/L	1.0 mg/L	Silver Bullet Effluent
2015-2016 Reporting Year	Iron	46.3 mg/L	1.0 mg/L	All discharge points[5]
5/14/2015	Iron	62.4 mg/L	1.0 mg/L	Front Gate/Effluent
12/3/2014	Iron	8.5 mg/L	1.0 mg/L	Front Gate/Effluent
2/27/2014	Iron	31.8 mg/L	1.0 mg/L	Silver Bullet Treatment System
12/6/2013	Iron	62.8 mg/L	1.0 mg/L	Silver Bullet Treatment System
2/10/2017	Zinc	50 mg/L	0.26 mg/L	Silver Bullet Effluent
1/11/2017	Zinc	22 mg/L	0.26 mg/L	Silver Bullet Effluent
2016-2017 Reporting Year	Zinc	36 mg/L	0.26 mg/L	All discharge points[6]
4/12/2016	Zinc	105 mg/L	0.26 mg/L	Silver Bullet Effluent

[3] The values for pH in this table represent the instantaneous NAL for pH.
[4] This value is represents the average of all iron measurements taken at the Facility during the 2016-2017 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.
[5] This value is represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.
[6] This value is represents the average of all zinc measurements taken at the Facility during the 2016-2017 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.

1/6/2016	Zinc	19 mg/L	0.26 mg/L	Silver Bullet Effluent
2015-2016 Reporting Year	Zinc	62 mg/L	0.26 mg/L	All discharge points[7]
5/14/2015	Zinc	118 mg/L	0.26 mg/L	Front Gate/Effluent
12/3/2014	Zinc	20.1 mg/L	0.26 mg/L	Front Gate/Effluent
2/27/2014	Zinc	41.7 mg/L	0.26 mg/L	Silver Bullet Treatment System
12/6/2013	Zinc	89.8 mg/L	0.26 mg/L	Silver Bullet Treatment System
3/2/2018	Nitrate + Nitrite as N	1.91 mg/L	0.68 mg/L	Silver Bullet Effluent
2/27/2014	Nitrate + Nitrite as N	1.19 mg/L	0.68 mg/L	Silver Bullet Treatment System
12/6/2013	Nitrate + Nitrite as N	1.4 mg/L	0.68 mg/L	Silver Bullet Treatment System

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2013-2014 and 2014-2015 wet seasons, as well as the 2015-2016, 2016-2017, and 2017-2018 reporting years. CBE alleges that since at least June 13, 2013, the Facility has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, iron, aluminum, zinc, and N+N.

CBE's investigation, including its review of the Facility's SWPPP, the analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Los Angeles Galvanizing has not implemented BAT and BCT at the Facility for its discharges of pH, iron, aluminum, zinc, and N+N, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. This includes a failure to implement its stated housekeeping practices, failing to prevent metallic chips from escaping the Facility, performing welding and other industrial activities adjacent to storm drains during rain events, and failing to place booms down for oil and grease management. The Facility was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Los Angeles Galvanizing is discharging polluted storm water associated with its industrial operations from the Facility without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CBE alleges that such violations also have occurred and will occur on other rain dates, including on information

[7] This value is represents the average of all zinc measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.

and belief every significant rain event that has occurred since June 13, 2013, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CBE alleges that the Facility has discharged storm water containing impermissible and unauthorized levels of pH, iron, aluminum, zinc, and N+N in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[8]

Further, CBE puts Los Angeles Galvanizing on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which Los Angeles Galvanizing must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Los Angeles Galvanizing's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented best management practices ("BMPs") that achieve BAT/BCT.[9] Finally, despite the fact that Los Angeles Galvanizing has submitted Exceedance Response Action Plans pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, iron, aluminum, zinc, and N+N, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Los Angeles Galvanizing is subject to penalties for violations of the General Permit and the Act since June 13, 2013.

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[8] The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Los Angeles located approximately 4.2 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at https://www.ncdc.noaa.gov/cdo-web/. (Last accessed on June 7, 2018).

[9] The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements set forth in Section XI of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Analyze for Pollutants That May Be Present in Significant Quantities.

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c).

Under the 1997 Permit, facilities must also analyze storm water samples for analytical parameters listed in Table D of the 1997 Permit. 1997 Permit, Section B(5)(c)(iii). For facilities with an SIC Code of 3471, which is the SIC Code that the Facility reported it was under pursuant to its coverage under the 1997 Permit and through the Facility's 2014-2015 Annual Report, Table D requires analysis of zinc, N+N, iron, and aluminum. Under the 2015 Permit, facilities must also analyze storm water samples for applicable parameters listed in Table 1 of the 2015 Permit. 2015 Permit, Section XI(B)(6)(d). For facilities with an SIC Code of 3479, Table 1 requires analysis of zinc and N+N.

Since at least the 2013-2014 wet season, Los Angeles Galvanizing has analyzed its storm water discharges for O&G, lead, COD, and N+N. However, without explanation, Los Angeles Galvanizing has failed to analyze certain storm water discharges for certain parameters as follows:

- On December 6, 2013, Los Angeles Galvanizing failed to analyze its storm water discharge for lead.
- On February 27, 2014, Los Angeles Galvanizing failed to analyze its storm water discharge for COD.
- On December 3, 2014, Los Angeles Galvanizing failed to analyze its storm water discharge for lead.
- On May 14, 2015, Los Angeles Galvanizing failed to analyze its storm water discharge for lead and COD.
- On January 6, 2016, Los Angeles Galvanizing failed to analyze its storm water discharge for O&G.
- On April 12, 2016, Los Angeles Galvanizing failed to analyze its storm water discharge for lead.
- On January 11, 2016, Los Angeles Galvanizing failed to analyze its storm water discharge for lead.
- On February 10, 2017, Los Angeles Galvanizing failed to analyze its storm water discharge for N+N.
- On March 2, 2018, Los Angeles Galvanizing failed to analyze its storm water discharge for lead and COD.

Based on observations of the Facility, the Facility's past measurements of lead, COD, O&G, and N+N, and based on the description of potential pollutants in the SWPPP, CBE alleges that lead, COD, O&G, and N+N are pollutants likely to be present in the Facility's storm water discharges in significant quantities.

The above failures to analyze for lead, COD, O&G, and N+N result in at least 11 violations of the General Permit. These violations are ongoing. Los Angeles Galvanizing is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least December 6, 2013.

CBE also alleges that ammonia is likely to be present in the Facility's storm water discharges in significant quantities, as the SWPPP indicates that ammonium is a pollutant associated with ammonium chloride salts at the Facility. The Facility has never analyzed its storm water discharges for ammonia. This results in at least 9 violations of the General Permit. These violations are ongoing. Los Angeles Galvanizing is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least June 13, 2013.

ii. Failure to Conduct Required Sampling and Analysis.

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm

water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

a. Failure to Sample All Discharge Locations.

The Facility's SWPPP indicates that the Facility has two storm water discharge locations. A review of the Facility's SWPPP map coupled with observations of the Facility indicate that there are at least four storm water discharge locations. This include discharges onto 52nd Street (listed on page 29 of the SWPPP), and discharges to the alley that flows out to Malabar Street via the alley. This also includes discharges associated with the main office portion of the Facility. CBE's visual observations and a review of the SWPPP indicate that the "office" area is used for finished materials storage, as well as the loading of such materials. The glossary in Attachment C of the 2015 Permit states that "Industrial Materials" include finished materials such as metallic products. The glossary further states that "Storm Water Associated With Industrial Activity" – includes "storage areas …for intermediate and finished products." It also includes "material handling" which includes the "storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product." Thus, the storm water discharges from the main office portion are considered industrial pursuant to the 2015 Permit.

Nevertheless, Los Angeles Galvanizing has consistently failed to collect and analyze storm water discharges from all of the sampling locations at the Facility. However, for the past five years, Los Angeles Galvanizing has only collected and analyzed storm water discharges from one storm water discharge location at the Facility. The failures result in at least 24 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Los Angeles Galvanizing is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 13, 2013.

b. Failure to Sample All Qualifying Events.

On information and belief, CBE also alleges that during the first halves of the 2015-2016 and the 2016-2017 reporting years, Los Angeles Galvanizing failed to collect and analyze storm water samples at the Facility from the two required storm events. Despite its claims that there were insufficient storm events that produced storm water discharges during those years, CBE alleges that local precipitation data compared to dates when the Facility did collect storm water

samples shows that discharges occurred on several dates during each of those wet seasons and years. On information and belief, CBE alleges that during the first half of the 2017-2018 reporting year, Los Angeles Galvanizing failed to collect and analyze storm water samples from any storm events at the Facility, and also failed to collect storm water samples from a second storm event during the second half of the 2017-2018 reporting year. Specifically, on information and belief, CBE alleges that storm water discharges from qualifying events have occurred on the following dates:

- July 18, 2015
- September 15, 2015
- October 5, 2015
- December 19, 2015
- October 17, 2016
- November 21, 2016
- November 26, 2016
- December 15, 2016
- December 16, 2016
- December 21, 2016
- December 22, 2016
- December 23, 2016
- December 24, 2016
- December 30, 2016
- October 20, 2017
- January 8, 2018
- January 9, 2018
- March 10, 2018
- March 15, 2018
- March 21, 2018

The failure to collect and analyze storm water samples from the requisite sampling events at all storm water discharge locations at the Facility results in at least 20 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Los Angeles Galvanizing is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 13, 2013.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation.

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). 1997 Permit, Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CBE indicates that Los Angeles Galvanizing has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide a sufficient explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water

discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Los Angeles Galvanizing has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

CBE puts Los Angeles Galvanizing on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Los Angeles Galvanizing is in ongoing violation of the General Permit every day that the Facility operate without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Los Angeles Galvanizing is subject to civil penalties for all violations of the CWA occurring since June 13, 2013.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of

minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Despite these clear BMP requirements, Los Angeles Galvanizing has been conducting and continues to conduct industrial operations at the Facility with inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(E) of the 2015 Permit. Specifically, the SWPPP map's legends are inaccurate; they fail to indicate where materials are directly exposed to precipitation; and they fail to identify all areas of industrial activity.

The SWPPP inaccurately indicates that the Facility is 46.5 acres. The SWPPP inaccurately states that the Facility is in baseline status. The SWPPP fails to describe all storm water discharge locations. The SWPPP fails to include a Monitoring Implementation Plan that includes sampling all discharge locations and for analyzing storm water discharges for all potential pollutants.

The SWPPP for the Facility fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs. The SWPPP fail to

identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of their BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Los Angeles Galvanizing has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP have therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CBE puts Los Angeles Galvanizing on notice that it violates the General Permit and the CWA every day that the Facility operate with inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CBE will include additional violations as information and data become available. Los Angeles Galvanizing is subject to civil penalties for all violations of the CWA occurring since June 13, 2013.

E. Failure to Comply with General Permit Evaluation and ERA Requirements.

On or about December 23, 2016, Los Angeles Galvanizing submitted a "Level 1 Exceedance Response Action Report" to the State Board's SMARTS system. The Exceedance Response Action ("ERA") Report and Level 1 status are triggered by exceedances of the NALs adopted in the General Permit. The ERA Level 1 report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." General Permit, § XII(C)(1)(c).

On or about December 30, 2017, Los Angeles Galvanizing submitted a "Level 2 Exceedance Response Action Plan" to SMARTS. The Level 2 ERA Action Plan and Level 2 status are triggered by continued exceedances of the NALs once a Facility has reached Level 1 status. The ERA Level 2 report must, among other requirements, address each parameter for which there is an exceedance. General Permit, § XII(D)(1)(a). Los Angeles Galvanizing's Level 2 ERA Action Plan failed to identify additional BMPs necessary to prevent future NAL exceedances or to even address the pH exceedances from the Facility.

Although "[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances." General Permit, Fact Sheet, p. 60. Accordingly, CBE puts Los Angeles Galvanizing on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without an adequate Level 2 ERA Action Plan for pH since at least December 30, 2017. These violations are ongoing. Los Angeles Galvanizing is subject to civil penalties for each day it has failed to submit an adequate Level 2 ERA Action Plan.

III. Persons Responsible for the Violations.

CBE puts Los Angeles Galvanizing Company and Lance Rosenkranz on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CBE puts Los Angeles Galvanizing Company and Lance Rosenkranz on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of Communities for a Better Environment is as follows:

Milton Hernandez-Nimatuj
Communities for a Better Environment
6325 Pacific Blvd., Ste. 300
Huntington Park, California 90255
Tel. (323) 826-9771
nimatuj@cbecal.org

V. Counsel.

CBE has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
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VI. Penalties.

As detailed in this Notice of Intent to Sue sent to Los Angeles Galvanizing, in accordance with requirements of the CWA, Los Angeles Galvanizing is in violation of multiple requirements of the General Permit, including exceedances of receiving water limitations and effluent limitations, monitoring and reporting violations, and SWPPP violations. Section 309 of the CWA, 33 U.S.C. § 1319(d), as adjusted by 40 C.F.R. §19.4, provides for penalties of up to $37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2, 2015, and up to $52,414 for violations occurring after November 2, 2015.

In addition to civil penalties, CBE will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CBE believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CBE intends to file a citizen suit under Section 505(a) of the Act against Los Angeles Galvanizing and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CBE would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CBE suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CBE does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Communities for a Better Environment

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
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Samuel Unger, Executive Officer II
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT A

Rain Dates, Los Angeles Galvanizing, Huntington Park, CA

11/21/2013	5/14/2015	12/30/2016
11/29/2013	7/18/2015	1/5/2017
12/19/2013	9/15/2015	1/9/2017
2/2/2014	10/5/2015	1/11/2017
2/27/2014	12/13/2015	1/12/2017
2/28/2014	12/19/2015	1/19/2017
3/1/2014	1/5/2016	1/20/2017
3/2/2014	1/6/2016	1/22/2017
4/1/2014	1/7/2016	1/23/2017
10/31/2014	1/31/2016	2/3/2017
11/1/2014	2/17/2016	2/6/2017
11/30/2014	2/18/2016	2/7/2017
12/2/2014	3/6/2016	2/10/2017
12/3/2014	3/7/2016	2/11/2017
12/12/2014	3/11/2016	2/17/2017
12/16/2014	4/8/2016	5/7/2017
12/17/2014	10/17/2016	10/20/2017
12/30/2014	11/20/2016	1/8/2018
1/10/2015	11/21/2016	1/9/2018
1/11/2015	11/26/2016	3/2/2018
2/22/2015	12/15/2016	3/10/2018
2/28/2015	12/16/2016	3/15/2018
3/1/2015	12/21/2016	3/16/2018
3/2/2015	12/22/2016	3/21/2018
4/7/2015	12/23/2016	3/22/2018
5/8/2015	12/24/2016	